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Public Prosecutor v Kong Hong Min

B HIGH COURT (KUCHING) — CRIMINAL APPEAL NOS BKI-41–8/6 OF 2018, BKI-41–9/6 OF 2018, BKI-41–10/6 OF 2018 AND BKI-41–11/6 OF 2018
CHRISTOPHER CHIN JC
1 NOVEMBER 2019

C

Criminal Procedure — Appeal — Petition of appeal — Respondent objected to petition of appeal by appellant — Whether there was a delay in petition of appeal — Whether there was failure to set out issue complained about on appeal — Whether there was prejudice to respondent — Criminal Procedure Code s 307(6)

D

Criminal Law — Dishonestly using forged documents — Magistrate acquitted and discharge respondent for offence of dishonestly using forged documents — Whether element of offence proved by prosecution — Whether respondent knew documents were forged — Whether respondent used documents dishonestly — Whether prima facie case proven against respondent — Penal Code s 471

E

F This was an appeal by the appellant against the acquittal and discharge of the respondent. The respondent was charged for four counts under s 471 of Penal Code for dishonestly using forged documents as genuine. The complainant ('PW4') inherited a piece of land from his father in Putatan after his father passed away in 2002. His older brother ('PW6') was appointed as the administrator of the said land. In 2006, PW4 was informed by PW6 that the G said land had been sold to March Advantage Sdn Bhd without the knowledge of PW4 and PW6 as the administrator. In 2011, the land was transferred to PW4 and the other half was inherited by Jeff Leong ('PW12'). In September 2013, PW4 received a letter from Land and Survey, Kota Kinabalu informing that a caveat had been lodged on the said land, attached with a copy of a sale H and purchase agreement between PW12 and PW6 with March Advantage Sdn Bhd. The said sale and purchase was alleged to be false by PW6 in 2006. PW4 received a letter from High Court concerning a claim by March Advantage Sdn Bhd and Foong Da Reality Sdn Bhd. PW4 had lodged a police report alleging that the said sale and purchase agreement was false and there was fraud on the I part of March Advantage Sdn Bhd. The respondent made preliminary objections to the petition of appeal by the appellant which were: (a) there was a delay in filing the petition of appeal by the appellant; and (b) there was a non-compliance of s 307(6) of the Criminal Procedure Code as the learned magistrate had erred in discharging and acquitting the respondent as sufficient

evidence was adduced to prove that the respondent had committed the offence. A

Held, dismissing appeal and allowing respondent's preliminary objection in part:

(1) It was the court's opinion that the appellant did file the petition of appeal out of the 14th or last day allowed so this preliminary objection was disallowed (see para 13). B

(2) Without compliance with s 307(6) of the Criminal Procedure Code, there was prejudice to the respondent in that the respondent would not know what or how he was to respond or argue on the case. The petition of appeal was silent as to the particulars showing how the learned sessions court erred and it was not for the court to assume such grounds as it would be grossly unfair to the respondent who would not know the case against him and thus deprived him of his right to frame an appropriate reply (see paras 18 & 44). C D

(3) It was of the court's opinion that there was an inference that the respondent might not know that the documents were forged. It was trite law that whenever there were more than one possible inference, the more favourable one to the respondent should be received by the court. The court was of the opinion that this element was not proven beyond reasonable doubt (see para 38). E

(4) It was of the court's opinion that the element of the respondent had used the documents as genuine, dishonestly or fraudulently was not proven beyond reasonable doubt as the element (c) was also not proven (see paras 40–41). F

(5) The court was satisfied that the appellant had not established a prima facie case against the respondent at the conclusion of the prosecution's case in all four cases against the respondent (see para 47). G

[Bahasa Malaysia summary

Ini merupakan rayuan oleh perayu terhadap responden yang telah dilepaskan dan dibebaskan. Responden telah dituduh dengan empat pertuduhan dibawah s 471 Kanun Keseksaan kerana menggunakan dengan niat salah dokumen palsu sebagai tulen. Pengadu ('PW4') telah mewarisi sebidang tanah daripada bapanya di Putatan selepas kematian bapanya pada tahun 2002. Abangnya ('PW6') telah dilantik sebagai pentadbir tanah tersebut. Pada tahun 2006, PW4 telah dimaklumkan oleh PW6 bahawa tanah tersebut telah dijual kepada March Advantage Sdn Bhd tanpa pengetahuan PW4 dan PW6 sebagai pentadbir. Pada tahun 2011, tanah tersebut telah dipindahkan kepada PW4 dan sebahagian lain telah diwarisi oleh Jeff Leong ('PW12'). Pada September 2013, PW4 menerima sepucuk surat daripada Jabatan Ukur dan Tanah, Kota Kinabalu memaklumkan bahawa satu kaveat telah dimasukkan atas tanah H I

A tersebut, dilampirkan bersama surat tersebut adalah sesalinan perjanjian jual beli antara PW12 dan PW6 dengan March Advantage Sdn Bhd. Jual beli tersebut dikatakan palsu oleh PW6 pada tahun 2006. PW4 menerima satu surat daripada Mahkamah Tinggi berkenaan tuntutan oleh March Advantage Sdn Bhd dan Foong Da Reality Sdn Bhd. PW4 telah membuat satu laporan B polis mengatakan bahawa perjanjian jual beli tersebut adalah palsu dan wujud frod dipihak March Advantage Sdn Bhd. Responden telah membuat bantahan awal terhadap petisyen rayuan oleh perayu yang merupakan: (a) wujud satu penangguhan dalam pemfailan petisyen rayuan oleh perayu; dan (b) wujud tidak patuhan s 307(6) Kanun Tatacara Jenayah memandangkan majistret C terpelajar telah terkhilaf dalam melepaskan dan membebaskan responden memandangkan keterangan yang mencukupi telah dikemukakan untuk membuktikan bahawa responden telah melakukan kesalahan tersebut.

D **Diputuskan**, menolak rayuan dan membenarkan sebahagian daripada bantahan awal responden:

(1) Adalah pendapat mahkamah bahawa perayu telah memfailkan petisyen rayuan diluar hari ke-14 atau hari terakhir yang dibenarkan dan oleh itu bantahan awal ini tidak dibenarkan (lihat perenggan 13(a)).

E

(2) Tanpa pematuhan s 307(6) Kanun Tatacara Jenayah, wujud prejudis terhadap responden dan responden tidak akan mengetahui apa atau bagaimana dia akan membalas atau menghujahkan kes tersebut. Petisyen rayuan diam berkenaan dengan butiran yang menunjukan bagaimana F mahkamah sesyen terkhilaf dan ianya bukan untuk mahkamah untuk membuat sangkaan alasan tersebut memandangkan ianya adalah tidak adil kepada responden yang tidak akan mengetahui kes terhadapnya dan oleh itu telah menghalang haknya untuk membuat balasan yang sesuai (lihat perenggan 18 & 44).

G

(3) Adalah pendapat mahkamah bahawa terdapat inferens bahawa responden mungkin tidak mengetahui dokumen tersebut telah dipalsukan. Adalah menjadi undang-undang mantap apabila wujud lebih daripada satu inferens, yang memihak pada responden harus H diterima oleh mahkamah. Mahkamah berpendapat bahawa elemen ini tidak dibuktikan melampaui keraguan munasabah (lihat perenggan 38).

(4) Adalah pendapat mahkamah bahawa elemen yang mana responden telah menggunakan dokumen sebagai benar, secara salah atau frod tidak dibuktikan melampai keraguan munasabah kerana elemen (c) juga tidak I dibuktikan (lihat perenggan 40–41).

(5) Mahkamah berpuas hati bahawa perayu tidak membuktikan kes prima facie terhadap responden di akhir kes pendakwaan dalam keempat-empat kes terhadap responden (lihat perenggan 47).]

Cases referred to

Bhandulananda Jayatilake v PP [1982] 1 MLJ 83; [1981] 1 LNS 139, FC (refd)

Legislation referred to

Criminal Procedure Code s 307, 307(1), (6)
Penal Code s 471

Nartiah Sambatan (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Benazir Japiril Bandaran (Siti Zawiyah bt Abdul Zain with him) (Idrus & Tsai) for the respondent.

Christopher Chin JC:

APPEAL

[1] This is an appeal by the prosecution against the acquittal and discharge of the accused in all the above four cases.

RULING

[2] I first heard this case on the 11 October 2019. The appellant immediately raised a preliminary objection to Puan Mary Lee appearing for the accused before me in this case. Puan Lee then excused herself from the proceedings.

[3] I then asked the Learned DPP to address me on the two preliminary objections raised by the respondent, the first being that the appeal was out time and secondly that the appeal did not include any particulars of the matters appealed against.

[4] The learned DPP had not filed any papers at all to oppose these two preliminary objections by the respondent, citing that as she was busy she had overlooked the matter. She had, however, filed a written submission in support of the appeal before me.

[5] The Learned DPP sought from the court time to file written submissions to oppose the two preliminary objections against understandably vehement objections by the respondent's counsel. I granted the Learned DPP time to file submissions and for the respondent to reply also in writing and that I will rule on the issues on the 1 November 2019.

[6] On the 1 November 2019 I dismissed the respondent's first preliminary objection but allowed the second. However, as the respondent has expressly

requested the court to primarily rule on the merits of the appeal, I informed parties that I will disregard the second preliminary objection of the respondent and proceed with the ruling on the merits of the appeal by the appellant.

CHARGES

[7] The accused was charged for four counts under s 471 of the Penal Code for dishonestly using forged documents as genuine. Section 471 of the Penal Code states:

> Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be forged document, shall be punished in the same manner as if he had forged such document.

[8] The charges are similarly worded in respect of the four cases. A sample:

> That you on the 24th March 2014 at about 2.12pm at the Registration Division of the High Court of Kota Kinabalu, in the District of Kota Kinabalu, in the State of Sabah, dishonestly uses as genuine an undated memorandum of Transfer of land with CL 215012847 between Jeff Leong and Albert Leong with March Advantage Sdn Bhd, which you have reason to believe to be a forged document, and that you have thereby committed an offence under section 471 of the Penal Code and punishable under section 465 of the same Code.

THE ACCUSED

[9] The accused is male, Chinese aged 62 and a practicing advocate and solicitor.

SENTENCE PROVIDED BY LAW

[10] Shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

BRIEF FACTS OF THE CASE

[11] The complainant ('PW4') inherited a piece of land from his father in Putatan after his father passed away in 2001. His older brother ('PW6') was appointed as the administrator of the said land. In 2006, PW4 was informed by PW6 that the said land had been sold to March Advantage without the knowledge of PW4 and PW6 as the administrator. PW6 lodged a police report alleging that his signature had been falsified in the sale and purchase for the said land.

[12] In 2011, the land was transferred to PW4 in 2011 (1/2 share) and the other half share was inherited by PW4's cousin Jeff Leong ('PW12'). In

September 2013, PW4 received a letter from Land and Survey KK informing him that a caveat had been lodged on the said land, attached with a copy of a S&P agreement between PW12 and PW6 with March Advantage SB. The said S&P agreement ('P17') was alleged to be false by PW6 in 2006. PW4 also received a letter from the High Court concerning a claim by March Advantage and Foong Da Reality SB. Following therefrom, PW4 lodged a police report alleging the said S&P to be false and that there was fraud on the part of March Advantage.

Preliminary objections by the respondent

[13] Out of time:

(a) on the objection raised by the respondent as to the delay in filing the petition of appeal by the appellant, based on our record, the prosecution had been served with the ROA by personal service on 5 March 2019. The appellant filed their petition of appeal on 18 March 2019, which is on the fifteenth day after they were served with the grounds of decision; and

(b) I am of the opinion that the appellant did file their petition of appeal out on the 14th or last day allowed and so I will disallow this preliminary objection.

[14] Non Compliance — s 307 o f the CPC:

(a) the respondent's second preliminary objection is this. That, further and in any event, the three purported grounds of appeal set out in para 3 of the appellant's petition for appeal dated 15 March 2019 against the decision made by the learned magistrate and reproduced herein below are mere, bare and general assertions contrary to s 307(6) of the CPC;

(b) the learned magistrate has erred in law and fact in discharging and acquitting the respondent as sufficient evidence has been adduced to prove that the respondent had committed the offences;

(c) the learned magistrate has erred in law and in fact to hold that the appellant has failed to prove a prima facie case against the respondent; and

(d) the order of acquittal and discharge is against the weight of the overwhelming evidence adduced by the appellant.

[15] The law provided in s 307(6) of the CPC expressly requires, that:

> Every Petition of Appeal shall state shortly the substance of the judgement appealed against and shall contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred.

[16] The appellant has submitted cases which suggest that the appeal is not defective if the substance of the judgement appealed against is not narrated in the appeal or if there are no particulars or the points of law where the court is alleged to have erred.

[17] Those cases cited may be distinguished because of their respective facts and circumstances which themselves would reveal the grounds of the appeal.

[18] Without compliance with s 307(6) above, there is prejudice to the respondent in that he would not know what or how he is to respond or argue his case.

[19] In addition, this court would have no guidance as to the matters appealed against. In such event, this court is guided on the assumption respondent's submission constitutes or contain the grounds and particulars of their appeal.

[20] Before I decide on the preliminary objections I note that the respondent, has applied for the merits of the appellant's appeal to be considered at the time and ruled upon. In para 16 of the respondent's submission dated 25 October 2019:

> 16. Notwithstanding the Respondent's position on the above Preliminary Objection, to save time, we would apply to this Honourable Court to have the Appeal heard on its merits and to be decided together with the Respondent's Preliminary objection.

[21] As the respondent has requested for the merits of the appeal to be considered I will therefore not dwell on the arguments and numerous authorities cited by counsel, save to say that I disallowed the first and allowed the second preliminary objection.

REASONING

[22] Based on the wording of both the charges as well as s 471 of the Penal Code, the appellant is required to prove the following:

(a) that the documents of the memorandum of transfer and sale and are forged documents;

(b) that the respondent knew or had reason to believe that the documents forged;

(c) that the respondents had used the documents as genuine; and

(d) that the respondent had used those documents dishonestly or fraudulently.

CONVEYANCING PRACTICE IN SABAH

[23] It is the normal practice amongst conveyancing advocates in Sabah that if they are to witness one out of two vendors/transferors (Jeff and Albert Leong) either on a memorandum of transfer (P16) or on the signing page of a sale and purchase agreement (P17) to write the number '(1)' and '(2)' respectively next to each of the vendors' printed name on P16 or P17 and then when she witnesses transferor numbered (1) she would state 'Witness to (1)' or words to that effect leaving sufficient space for a second attestor to sign and rubber stamp for the second party.

[24] The second prudent practice would be that the delivery of the documents from one advocate to another to always be accompanied by a covering letter stating, among other things, who the advocate/dispatcher is acting for, describing the enclosures, and the purpose of forwarding the documents.

[25] As the above practices were not followed, the receipt by any advocate in Sabah of P16 and P17 in the evidenced manner in which they were attested would immediately give rise to the accepted conclusion that PW10 (Advocate Noorazah bt Abdul Rahman) attested the signatures of both the vendors.

[26] But if they had followed the above prudent conveyancing practices then P16 and P17 would have been formally returned to the accused's legal firm with the attestation of one of the vendors (Albert Leong) patently and obviously missing and would put the accused immediately to notice or query as to the completeness of the execution of the two documents concerned. A covering letter would also alert parties to a missing signature.

[27] Failure to adopt these prudent practices (admittedly, there is no legal requirement to do so) exposed both PW10 and the accused to be unwitting instruments of fraud or dishonesty by parties as yet to be established, but by no means conclusively point to them (PW10 and the accused) being guilty of fraud or dishonesty.

[28] Fixers and brokers whose remuneration from such deals would be many times more than the scaled legal fees of advocates would normally be the personal courier of these documents as it was in their direct financial interest to expeditiously ensure that they (the execution of the documents) are completed for the deal to go through.

THE ROLE OF 'DATU' HARUN BIN ABDULLAH (PW7) AND 'WONG'

[29] Harun's and one 'Wong's' role in this scheme cannot be underestimated. They are the kind of fixers, runners and unlicensed brokers that are prevalent in the Sabah conveyancing arena involving principally in land deals.

[30] Harun averred in his witness statement and in evidence that having collected P16 and P17 from PW10 he did not open the envelope but delivered the same to the accused's office.

[31] This is not easy to believe.

[32] Harun's (PW7's) sole role was to be the front for the purchaser company and to secure the signatures of the two vendors on P16 and P17. When his job was done, he would resign from the purchaser company (which he averred that he did) and be paid a handsome commission by Wong of RM60,000. This is an enormous sum for what he avers to be basically a delivery boy's task and seriously begs belief.

[33] With this golden carrot dangling before him, it is difficult to imagine or believe that he would have returned P16 and P17 to the accused with the signature of one of the two vendors unsecured.

CONCLUSION FROM CONVEYANCING PRACTICE

[34] I conclude that because of the manner (in my view undesirable) in which P16 and P17 were attested, also as to how the accused and PW10 processed P16 and P17, and, taking into account the involvement and modus of 'Wong' and 'Harun' it would be very difficult to infer that the accused (or PW10 for that matter though she is not the one on trial) *knew or ought to have known* that P16 and P17 contained a forged signature.

[35] Had the accused harbored a clear intention to secure the land deal by forged signatures, there would be no need for him to go through the whole charade of using a third-party company, employing its part-time director, Harun, as a front to secure the signatures of the vendors. The fact that the accused and/or the intended purchaser did, showed that there was every intention to properly secure the actual signatures of the vendors to the P16 and P17. Hence a key ingredient of the offence is not proven, or a reasonable doubt has been raised.

ISSUES

[36] Based on the reading of the notes of proceedings:

(a) that there was no evidence from the police investigators as to who had committed the forgeries on P16 and P17;

(b) PW10 Noorazah (Advocate) did not inform the accused or Mr Wong of Foong Da Realty that PW6 have not signed P17 and P16 before her, thus no affirmative evidence to say the accused had the imputed knowledge or have reason to believe that P17 and P16 were forged, when his firm filed those documents in the land registry and the High Court for the civil case;

(c) the fact is, in both P17 and P16, the signatures of the vendors were attested by PW10, which is the reason why the accused can presume the documents to be signed and authenticated properly. Therefore, there is no reason for the accused to believe that P17 and P16 contained a forged signature;

(d) that in pursuing the plaintiff's claims in the writ of summons filed in the High Court on 5 August 2013, and the defendants' counterclaim, the parties were duty bound to follow the orders of the court to file P17 and P16 in their bundle of documents, as these documents were central to the issue of the intended transfer of the land in issue ('the said land);

(e) with regards to the filing of P17 and P16 at the Land Survey Department, the defence had argued that both Foong Da Realty and March Advantage SB have respective interests in the said land arising from various agreements and deeds entered into between themselves as the purchase and PW6, PW4 and PW12 on the other part as vendors. As such, they would need to show how they have derived their equitable interest on the said land, in this case, to register both P16 and P17;

(f) that the decision of the High Court in the writ filed by the accused's legal firm was that PW6, PW4 and PW12 are only the bare trustee of the land, who jointly and severally have the duty to convey the title and registered ownership of the said land to the beneficial owner;

(g) further in the same decision, P17 had been ordered to be rescinded, and for the same reason, P16 is rendered otiose. There is nothing for PW6 to complain about, in the context of P17 and P16;

(h) there was no evidence to support that the eight specimen signatures to compare with the alleged signature of PW6 in P17 and P16 given to PW5 (the chemist) were taken from PW6, either from the police investigators or from PW6 himself;

(i) the accused in filing P17 and P16 did not have the requisite of mens rea to commit the offence. He was not the solicitor who was tasked to attest the signature of PW6. P17 and P16 were returned to his legal firm without any information that PW6 did not sign before PW10. There was no direct evidence that the accused had the knowledge that the signatures of PW6 in P16 and P17 were forged; and

(j) Mr Wong (PW3) testified that the accused told PW7 that he could not prepare the S&P agreement because he was the counsel for Foong Da Realty, so PW7 looked for another lawyer to prepare the S&P agreement.

ARE THE INGREDIENTS OF THE OFFENCE PROVEN?

[37] That the documents of memorandum of transfer (P16) and sale and purchase agreement (P17) are forged documents:

(a) PW6 testified that he never signed any S&P agreement and memorandum of transfer with March Advantage SB, this was supported by PW12 and the lawyer Noorazah bt Abd Rahman (PW10) who witnessed the signature of PW12;

(b) PW5 carried out analysis on the alleged signatures of PW6 in the P16 and P17, and opined that the signatures were most probably not written by PW6; and

(c) this element was proved beyond reasonable doubt.

[38] That the accused knew or had reason to believe that the documents were forged:

(a) Harun Abdullah (PW7) testified that in 2005, the accused and one Mr Wong of Foong Da Realty met with PW7 with a view to purchasing a new company called March Advantage SB and appointing PW7 as director. Both the accused and Mr Wong instructed PW7 to send a letter of offer to purchase the said land to PW10;

(b) PW7 testified that P17 and P16 were prepared by the accused, and that it was the accused and Mr Wong who instructed PW7 to bring both documents to PW10, which PW7 did;

(c) PW7 testified that when he put his signatures on both the documents, the vendors have yet to do so. PW7 later on the instruction of the accused, collected these documents from PW10's office and handed them over to the accused at the accused's office at M/s Lee & Kong. PW7 averred that he only dealt with the accused in his office and not other lawyers regarding the sale and purchase transaction of the said land;

(d) PW7 testified that the reason he was instructed to send P16 and P17 to PW10 is because, had PW4 (PW12) and PW6 knew that it was the accused who prepared P17, the both of them would not have signed it;

(e) the prosecution argued that the defense never rebutted PW10's testimony that PW6 was not present in her office and did not place his signature on P16 and P17. They argued that PW6 had still not signed P16 and P17 when the documents were passed by PW7 to the accused in his office;

(f) the prosecution argued that the accused knew P16 and P17 were forged as PW6 did not sign both documents. They further argued that the defense did not challenge the issue raised by the prosecution that the accused would surely know that PW6 did not sign P16 and P17 because he would have checked them when he received them from PW7. His act of directing for the documents to be signed before PW10 also showed his knowledge that PW6 and PW12 surely would not have signed had they knew he prepared the documents;

(g) PW11 (officer of Land & Survey Dept) issued a letter to M/s Lee & Kong dated 19 December 2012 to inform them that the P16 could not be registered as there was a police report concerning the said land. However, on 12 September 2013 and 24 March 2014, the accused used both P16 and P17 by filing them in the High Court and used them as genuine;

(h) I am of the opinion that there is an inference that the accused might not have known that the documents were forged. There is possibility that as the accused was acting for Foong Da Realty, he could not properly advice PW6 as to the sale and purchase hence his instruction to PW7 for the P16 and P17 to be attested before PW10, another lawyer; and

(i) it is trite that whenever there are more than one possible inference, the more favourable one to the accused should be received by the court. I am of the opinion that this element was not proven beyond reasonable doubt.

[39] That the accused had used the documents as genuine:

(a) PW8 (officer at Land & Survey KK) testified that in September 2010, M/s Lee & Kong sent an application to lodge a caveat together with P17 to be registered in the L&S Dept. He also testified that P16 was submitted to L&S Dept by M/s Lee & Kong in February 2012 for registration. However, the registration of P16 was rejected due to the police report lodged by PW6 in 2006 on the forgery of his signature in P16 and P17; and

(b) PW9 (court clerk) testified that one Kong Hong Ming of M/s Lee & Kong filed a writ of summons dated 5 August 2013, and subsequently

P17 in an affidavit dated 11 September 2013. Further the same Kong Hong Ming registered P16 under a file named bundle.

[40] That the accused had used those documents dishonestly or fraudulently.

[41] I am of the view that this element was also not proven beyond reasonable doubt, as the element (c) above was also not proven.

[42] Furthermore, with regards to the third and fourth charges, I agree with the defense counsel's submission that the reason why the accused had filed both P17 and P16 in their bundle of documents, as these documents were central to the issue of the intended transfer of the said land.

APPROACH BY THIS COURT IN AN APPEAL FROM THE LOWER COURT

[43] In *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83; [1981] 1 LNS 139 it was held by the Federal Court that on an appeal against the sentence meted by a lower court:

> For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorized or extraneous or irrelevant exercise of discretion.

[44] The petition of appeal is silent as to the particulars showing how the learned sessions court erred and it is not for this court to assume such grounds as it would be grossly unfair to the respondent who would not know the case against him and thus deprive him of his right to frame an appropriate reply.

DECISION

[45] I dismiss the first preliminary objection of the respondent (s 307(1) filing out of time).

[46] I uphold the second preliminary objection (non-compliance with s 307(6) of the CPC) of the respondent against the petition of appeal by the appellant.

[47] These appeals should end here. but following the request by the respondent for this court to also rule on the merits of the appellant's appeal I rule as follows:

(a) I am satisfied that the appellant has not established a prima facie case against the respondent at the conclusion of the prosecution's case in all

four cases against the respondent. Hence, with regards to the merits of the appellant's appeal I affirm the decision of the learned sessions court judge in all four cases. In consequence the appeal of the appellant in all four cases is dismissed.

[48] I confirm that the respondent is discharged and acquitted in all four cases.

Appeal dismissed and respondent's preliminary objection allowed in part.

Reported by Mohd Kamarul Anwar